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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 248.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. THE NATIONAL BROADWAY BANK, PLAINTIFFS IN ERROR,

vs.

JOHN T. HOFFMAN, MAYOR, AND RICHARD T. CONNOLLY, COMPTROLLER, ETC.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

2204

2 Act. 1867 - Leg. suspends action under act

FILED JANUARY 11, 1868.

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1 The answer of the judges of the Court of Appeals of the State of New York, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

[SEAL.]

C. H. YOUNG,
Deputy Clerk of the Court of Appeals of the State of New York.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable, the judges of the Court of Appeals of the State of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals of the said State of New York before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the people of the State of New York upon the relation of the National Broadway Bank against John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of county of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their

3 validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said relators, the National Broadway Bank, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the tenth day of February next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-

rect that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] KENNETH G. WHITE,
Clerk of the Circuit Court of the United States for the Southern Dist. of New York.

Jan'y 6, '60. Allowed by:

S. NELSON.

Endorsed: U. S. Supreme Court. The People *ex. rel.* The National Broadway Bank *vs.* John T. Hoffman, mayor of the city of New York, and others. Writ of error. C. D. Burrill, att'y. Filed Jan'y. 9, 1868.

4 The United States of America to John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of surpervisors of the county of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the tenth day of February next, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the State of New York, wherein the people of the State of New York on the relation of the National Broadway Bank are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l Nelson, associate justice of the Supreme Court of the United States, this second day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

S. NELSON.

5 On this eighth of January, in the year of our Lord one thousand eight hundred and sixty-eight, personally appeared before me, the subscriber, Timothy Donovan, and makes oath that he delivered a true copy of the within citation to Richard O'Gorman, the attorney for the defendants there named, by delivering the same to a clerk in the office of said attorney, who admitted service thereof.

TIMOTHY DONOVAN.

Sworn to and subscribed the 8th January, A. D. 1868.

[SEAL. S. N. JOHNSON
Notary Public City and Co. of New York.

Endorsed: The People *ex. rel.* National Broadway Bank *ag't* John T. Hoffman, mayor, &c., and others. Citation. C. D. Burrill, att'y. Filed Jan'y 9, 1868. Due service this day admitted. Ja'y 8, '68. Rich'd O'Gorman, counsel to the corp'n.

6 Supreme Court of the United States of America.

Bond for costs.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the National Broadway bank, plaintiff in error,
against
JOHN T. HOFFMAN, MAYOR OF THE CITY of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, defendants in error.

Know all men by these presents that we, John E. Burrill and Charles D. Burrill, of the city and State of New York, are held and firmly bound unto the above-named John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the supervisors of the county of New York, defendants in error, in the sum of five hundred dollars, to be paid to the said defendants in error, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators jointly and severally, firmly by these presents.

7 Sealed with our seals, and dated this 2d day of January, one thousand eight hundred and sixty-eight.

Whereas the above-named relators, the National Broadway Bank, have prosecuted a writ of error in the Supreme Court of the United States to the Court of Appeals of the State of New York, to reverse the judgment or final order rendered in the above-entitled suit by the said Court of Appeals of the State of New York:

Now, therefore, the condition of this obligation is such that if the above-named relators shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make the same good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

[L. S.] J. E. BURRILL,
[L. S.] CHARLES D. BURRILL.

Sealed and delivered, and taken and acknowledged this 2d day of January, 1868, before me.

S. N. JOHNSON, *Notary Public.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

John E. Burrill and Charles D. Burrill, being severally duly sworn, do depose and say, each for himself, that he is a freeholder in the city of New York, and worth the sum of one thousand dollars

8 over and above all his just debts and liabilities.

J. E. BURRILL.
CHARLES D. BURRILL.

Sworn to before me this 2d day of January, A. D. 1868.

S. N. JOHNSON, *Notary Public.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this second day of January, A.D. 1868, before me personally came John E. Burrill and Charles D. Burrill, with whom I am personally acquainted, and who are known to me to be the persons described in, and who executed the foregoing instrument, and severally acknowledged that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

[NOTARY'S SEAL.] S. N. JOHNSON, *Notary Public.*

Jan'y 6, '68. Approved: S. NELSON.

9 Supreme Court.

THE PEOPLE *ex rel.* THE BROADWAY NATIONAL Bank, appellant,
against
JOHN T. HOFFMAN, MAYOR, &c., AND OTHERS.

Take notice that the relator appeals to the Court of Appeals from the judgment of the general term of the Supreme Court, affirming the judgment of the special term, rendered herein in favor of the above-named defendants.

Yours, &c.,

BURRILL, DAVISON & BURRILL,
Attorneys for Relator, Appellant.

Richard O'Gorman, esq., attorney for defendants, respondents; W. C. Conner, clerk of the county and city of New York.

STATE OF NEW YORK, *City and County of New York, ss:*

I, William C. Conner, clerk of the city and county of New York, do certify that the annexed are copies of the original judgment rolls and notice of appeal of the special and general term of the Supreme Court in the above proceedings, now on file in my office, and of the whole of said originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 19 day of March, one thousand eight hundred and sixty-seven.

[SEAL.] WM. C. CONNER, *Clerk.*

10 Supreme Court.

THE PEOPLE *ex rel.* THE BROADWAY NATIONAL Bank
against
JOHN T. HOFFMAN, MAYOR, &c., AND OTHERS.

Take notice that the relator appeals to the general term of the

Supreme Court from the judgment herein rendered in favor of the defendants.

Yours, &c.,

BURRILL, DAVISON & BURRILL,
Att'ys for Relators.

To R. O'Gorman, esq., att'y for def'ts; William C. Conner, esq., county clerk.

Pleas in the Supreme Court of the State of New York, at the City Hall, in the city and county of New York, at a special term held on the 11th day of March, 1867:

CITY AND COUNTY OF NEW YORK, *ss*:

Be it remembered, that at the special term of said court, held at the City Hall, in the city of New York, on the 19th day of February, 1867, before the Hon. W. H. Leonard, one of the justices of the said court, the said people, upon the relation of the National Broadway Bank, issued their writ of alternative mandamus to John T. Hoffman, mayor of the city of New York, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, which writ is in the words and figures following:

11 The People of the State of New York to John T. Hoffman, mayor of the city of New York, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York:

Whereas, by an act of the legislature of the State of New York, passed on the 30th of April, 1866, the board of supervisors of the county of New York were authorized and directed to cause to be issued to any bank, banking association, or insurance company, which may have paid taxes in that county for the year one thousand eight hundred and sixty-three, or one thousand eight hundred and sixty-four, levied upon any portion of its capital stock invested in certain securities of the United States by law exempt from taxation, bonds of the said county, to be known and designated as "New York county bonds for the repayment of taxes," to the amount of taxes unpaid for either of said years, and collected from or paid by said bank, association, or company, upon the portion of its capital invested in such securities, and for costs, charges, or interest thereon, and interest upon the amount so paid or collected until the issue or delivery of said bonds, whenever, and as soon as the amounts of such payments for such taxes, and the costs, charges, and interest thereon, should have been duly audited and allowed by the board of supervisors of the said county, and such auditing and allowance should have been approved by the mayor of the said city, and the corporation counsel thereof;

And whereas it was further by said act provided, that said bonds should bear interest at seven per cent., payable semi-annually, on

the first days of May and November, in the year one thousand eight hundred and sixty-six, and should be signed by the comptroller of said city, and countersigned by the mayor thereof, and sealed
12 with the common seal of said board of supervisors, and attested by the clerk of said board, and that the principal of such bonds should be redeemable in five equal annual instalments, commencing first November, one thousand eight hunnred and sixty-seven;

And whereas the said board of supervisors were, by said act, further authorized and directed, immediately upon the completion of said auditing and allowance, and the giving of said approval thereof, to provide, by ordinance or resolution, for the issue of said bonds, and to fix and determine the nominal amount of such bonds, and upon such provision being made, the comptroller of said city was authorized and directed to prepare and deliver said bonds to the bank, association, or insurance companies entitled thereto under the provisions of said act, and after the issue of said bonds, the said board of supervisors was further authorized to raise by tax the money necessary to pay the principal and interest of said bonds;

And whereas it has been represented to us, in our Supreme Court of the State of New York, on the part and behalf of the National Broadway Bank of the city of New York, that said bank, during the year one thousand eight hundred and sixty-three and one thousand eight hundred and sixty-four, was a banking association, organized and doing business under the laws of the State of New York, at the city and in the county of New York, and was, pursuant to act of Congress, to provide a national currency, approved June 3, 1864, and also pursuant to an act of the legislature of the State of New York, entitled "An act enabling the banks of this State to become banking associations for the purpose of banking under the laws of the United States," passed March 9, 1865, converted into and became a national banking association, under the provisions of the act of Congress above referred to, and still is such national banking association, doing business in the city of New York, and that for the purpose of obtaining, under the provisions of the act of April, one thousand eight hundred and sixty-six, hereinbefore mentioned, the refunding to the said National Broadway Bank of the taxes imposed for
13 the years one thousand eight hundred and sixty-three and one thousand eight hundred and sixty-four, and collected from the said Broadway Bank, upon the portion of its capital so invested in such securities of the United States, the said National Broadway Bank caused to be made and presented to the said board of supervisors a full and particular statement, under oath, showing, among other things, the portion of the capital of the said bank so invested in such securities, and specifying and describing such securities and the amount thereof, and also showing the amount of taxes imposed for the years one thousand eight hundred and sixty-three and one thousand eight hundred and sixty-four, respectively, and collected in said county from said last-named bank, for and in respect to such portion of its capital, and of the costs, charges, and interest thereon;

And whereas such proceedings were thereupon duly had by the said board of supervisors that, after having fully investigated the same, the said board did audit and allow the amount paid by the said the Broadway Bank for taxes levied for the year one thousand eight hundred and sixty-three, upon such portion of its capital stock as was invested in such securities of the United States so exempt as aforesaid, at the sum of eighteen thousand eight hundred and one dollars and eighteen cents, with interest from November thirtieth, one thousand eight hundred and sixty-three, to first May, one thousand eight hundred and sixty-six, amounting to three thousand one hundred and seventy-six dollars and sixty-two cents, and the amount paid by the said bank for taxes levied for the year one thousand eight hundred and sixty-four, upon such portion of its capital stock as was invested in such securities so exempt as aforesaid, at twenty-eight thousand and eighty-six dollars and six cents, with interest thereon from October ninth, one thousand eight hundred and sixty-four, to first of May, one thousand eight hundred and sixty-six, amounting to three thousand and fifty-nine dollars and forty-five cents, and that the total amount of said moneys so paid, and interest, as audited and allowed by said board, amounted, on first of May, one thousand eight hundred and sixty-six, to
14 fifty-three thousand one hundred and thirty-two dollars and thirty-one cents, and that the said auditing and allowance were submitted to and approved by the said mayor of the city of New York and the said the corporation counsel of the said city;

And whereas the said the board of supervisors of the said county of New York, on the seventh day of January, one thousand eight hundred and sixty-seven, passed an ordinance entitled "An ordinance to authorize the comptroller to issue bonds for refunding to various banks and insurance companies certain moneys collected from or paid by the same on account of the taxes of the years eighteen hundred and sixty-three and eighteen hundred and sixty-four, upon that portion of their capital invested in securities of the United States by law exempt from taxation," in and by which the said the comptroller of the city and county of New York was authorized to issue bonds of the county of New York, to be designated "New York county bonds for the payment of taxes," in conformity with the aforesaid act of the legislature, passed April thirtieth, one thousand eight hundred and sixty-six, to such banks as by said act were entitled thereto, which said bonds were thereby ordered to be made redeemable in five annual instalments, in such amounts as together will make an amount equal to the amount to be refunded to said bank, as audited and allowed by said board, and approved by the said mayor and corporation counsel, and that said bonds should bear interest at seven per cent. from first May, one thousand eight hundred and sixty-six, payable semi-annually until such bonds should become due and payable, and that the principal should be redeemable in five annual instalments, commencing first November, one thousand eight hundred and sixty-seven; and it was thereby further ordered that said bonds should be signed by the

comptroller and countersigned by the mayor, and sealed with the common seal of the board of supervisors, and attested by the clerk of said board;

And whereas the said board of supervisors did, on the twenty-ninth day of January, one thousand eight hundred and sixty-
15 seven, pass and adopt another ordinance and resolution, in and by which the said comptroller was authorized and directed to issue New York county bonds for the repayment of taxes, in accordance with the ordinance or resolution of said board, hereinbefore last referred to, passed January 2, 1867, in favor of the aforesaid Broadway Bank, for the aforesaid sum of fifty-three thousand one hundred and thirty-two dollars and thirty-one cents, so audited and allowed as aforesaid;

And whereas, in accordance with said ordinance and resolution, said bonds, so appropriated and directed to be issued in favor of said bank, have been duly prepared, and are in the possession of you, the said Richard B. Connolly, comptroller as aforesaid, ready to be signed, countersigned, sealed and attested as aforesaid, and then to be delivered and issued to the said National Broadway Bank. And that you, the said Richard B. Connolly, comptroller as aforesaid, refuse to sign said bonds; and you, John T. Hoffman, mayor of the said city of New York, refuse to countersign the same; and you, the said Joseph B. Young, clerk of the said board of supervisors, refuse to attest the same, or to affix the common seal of the said the board of supervisors of the county of New York thereto, although you have been duly requested so to do:

Now, therefore, we being willing that full and speedy justice be done in this behalf to the said National Broadway Bank, of the city of New York, do command you that immediately after the receipt of this writ, you, the said John T. Hoffman, mayor of the city of New York, and you, the said Richard B. Connolly, comptroller of the said city of New York, and you, the said Joseph B. Young, clerk of the board of supervisors of the county of New York, do severally sign, countersign, seal and attest the aforesaid bonds so ordered and directed by the said the board of supervisors as aforesaid, to be issued in favor of the said the Broadway Bank, for the aforesaid sum of fifty-three thousand one hundred and thirty-two dollars and thirty-one cents, and interest from first May, one thousand eight hundred and sixty-six, as by said resolution and ordinance ordered;
16 and that the said bonds, when so signed, countersigned, sealed and attested, you do deliver, or cause to be delivered, to the said the National Broadway Bank, or to the president or cashier thereof; or that you show cause to the contrary thereof before our Supreme Court, at special term, to be held at the chambers of the justices thereof, at the City Hall in the city of New York, at the opening of the court on the first Monday of March next, or so soon thereafter as counsel can be heard, lest complaint shall again come to us by your default; and in what manner you shall have executed this our writ make known to our said Supreme Court, at the said special term thereof, at the time and place aforesaid.

Witness Hon. W. H. Leonard, one of the justices of our said Supreme Court, at the city of New York, this 19th day of February, one thousand eight hundred and sixty-seven.

BURRILL, DAVISON & BURRILL,
Attorneys.

By the court.
[SEAL.] WM. C. CONNER, *Clerk.*

Endorsed: Issued by special order of the court, February 19, 1867. Wm. C. Conner, clerk.

17 And the said defendants return to the said writ as follows:

The answer of John T. Hoffman, mayor, and Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, to the within-mentioned writ of alternative mandamus.

We, the said John T. Hoffman, mayor, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors, hereby return to the Supreme Court:

That of the capital of the said Broadway Bank, in respect to which the tax for the year 1863 was imposed upon and collected from said bank, the sum of $810,930 58 was invested in certificates, issued under and pursuant to the provisions of the act of Congress of the United States, passed March 1st, 1862, commonly called certificates of indebtedness, of one of which said certificates a copy is hereunto annexed, marked "A," and that of the capital of said bank, in respect to which the tax for the year 1864 was imposed upon and collected from said bank, the sum of $428,629 22 was invested in such certificates of indebtedness; and that in the audit and allowance of the claim of said relator mentioned in said alternative writ to be refunded the taxes paid for the years 1863 and 1864 by said Broadway Bank, in respect to the portion of its capital invested in securities of the United States by law exempt from taxation, the said board of supervisors did allow to said bank the amount of tax imposed upon it, for and in respect to the amount of its capital so invested in said certificates of indebtedness.

Wherefore we claim that the said audit and allowance of the claims of the said relators, so far as it includes the amount of tax imposed upon said bank, in respect to that portion of its capital in-
18 vested in such certificates of indebtedness, was unauthorized by the act of April 30th, 1856, and was therefore illegal and void.

JOHN T. HOFMAN, *Mayor.*
RICHARD B. CONNOLLY,
Comptroller.
RICHARD O'GORMAN,
Counsel to the Corporation.

"A."

If the order blank is not filled, this certificate, issued to John C. Palmer, pres., will be paid to bearer:

UNITED STATES TREASURY.

[1,000.] [1,000.]

4,706. No. 4,706.

Certificate of indebtedness. The United States is indebted to or order, in the sum of one thousand dollars, payable in one year from date, or earlier, at the option of the government, on the surrender of this certificate, with interest at 6 per centum per annum.

Washington, Aug't 15, 1865.

L. BARRY,
Ass't Treasurer of U. S.

Issued on acc't of War Warrant No. 5, 326, dated Aug't 5th, 1865.

Act of March 1st, 1862.

Countersigned by direction of the Secretary.

J. N. GRAHAM,
Act'g Reg. of Treasury.

And the said relators, by their attorneys aforesaid, did demur to the return of the defendants, for that the same does not state facts sufficient to constitute a defence to the said writ.

19 In which demurrer the said defendants, by their attorney aforesaid, did join.

And the matters aforesaid having been considered, and the parties aforesaid by their counsel having been heard, after due deliberation had thereupon, it was ordered and decided by the justices aforesaid, that the defendants therein, the said John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, had made good answer to the aforesaid writ, and were entitled to judgment against the relators herein, with costs fixed at fifteen dollars.

Wherefore it is considered, ordered, and adjudged, that the said John T. Hoffman, mayor of the city of New York, Richard B. Connolly, comptroller of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, defendants herein, have judgment against the relators, the National Broadway Bank herein, with fifteen dollars costs, to be paid to said defendants, and that the said defendants have execution therefor.

Judgment signed this 11th day of March, 1867.

D. P. INGRAHAM, *Justice.*

And now, at this day, that is to say on the 19 day of March, A. D. one thousand eight hundred and sixty-seven, at the City Hall, in the city of New York, at a general term of this court, came the parties aforesaid, by their respective attorneys aforesaid, and all and singular the premises aforesaid being seen and fully understood by the court now here, and mature deliberation being thereupon had, said court rendered its judgment in the following words, viz.:

20 At a general term of the Supreme Court, held at the City Hall, New York, on the 19 day of March, 1867.

Present: Hon. Wm. H. Leonard, P. J., Sutherland and Ingraham, J. J.

THE PEOPLE *ex rel.* THE BROADWAY NATIONAL Bank, appellant,
against
JOHN T. HOFFMAN, MAYOR, &C., AND OTHERS, respondents.

The appeal taken by the above-named appellant from the judgment entered herein, at special term, in favor of the above-named respondents, on the 11th day of March, 1867, coming on to be heard, after hearing John E. Burrill, esq., of counsel for said relator, appellant, and Richard O'Gorman, of counsel for said defendants, respondents, and due deliberation—

On motion of Richard O'Gorman, of counsel for said defendants, respondents, it is ordered and adjudged that the said judgment so appealed from be, and the same is hereby in all things affirmed, with the costs of said appeal.

WM. C. CONNER, *Clerk.*

21 At a term of the Court of Appeals of the State of New York, held at the capitol, in the city of Albany, on the thirty-first day of December, 1867.

Present: Hon. Henry E. Davies, chief judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of the National Broadway Bank, appellant,
against
JOHN T. HOFFMAN, MAYOR OF THE CITY OF New York, Richard B. Connolly, comptroller, of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, respondents.

The appeal in this cause having been argued by Mr. J. E. Burrill, of counsel for the relator, the National Broadway Bank, appellant, and by Mr. Richard O'Gorman, of counsel for the defendants, respondents, and due deliberation being had thereon, it is ordered that the judgment of the Supreme Court appealed from be, and the same is hereby, in all things affirmed, with costs to the defendants, respondents.

And the relators, the National Broadway Bank, having claimed that such portion of its capital stock as was invested in certificates of indebtedness issued under and by virtue of the act of March first, one thousand eight hundred and sixty-two, was exempt from taxa-
22 tion by State or municipal authority, under and by virtue of the eighth section of article one of the Constitution of the United States, and also under and by virtue of the second section of the act of Congress entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," approved February 25, 1862, and also under and by virtue of an act of Congress entitled "An act to provide ways and means for the support of the government," approved March 3d, 1863, and also by virtue of the act of congress entitled "An act to provide a national currency, secured by a pledge of the United States stocks, and to provide for the circulation and redemption thereof," approved 25 February, 1863; and by virtue of an act of Congress similarly entitled, approved June 3d, 1864; and the act of Congress entitled "An act to provide ways and means for the support of the government, and for other purposes," approved June 30, 1864, and the several acts additional to and amendatory of said several acts on the ground that the portion of the capital stock of said National Broadway Bank so invested as aforesaid is invested in the public debt of the United States, and thereby exempt from taxation by State or municipal authority, and on the ground that a tax upon said capital so invested is pro-
hibited by the Constitution and laws of the United States, and
23 the validity of the authority claimed under the statute of the State of New York, entitled "An act in relation to the taxation of moneyed corporations and associations," passed April 29, 1863, and other statutes of said State to impose a tax upon said portion of the capital of said bank so invested as aforesaid being drawn in question. It is certified that the judgment of this court is against the said relator, the National Broadway Bank, the appellant, and is against the exception, right, privilege, or exemption claimed by said appellant under and by virtue of the said provisions of the Constitution of the United States, and the several acts of Congress before referred to, and in favor of the validity of the said statute of the State of New York, and of the authority exercised thereunder, and of the construction of the eighth section of article one of the Constitution of the United States, and of the several acts of Congress before mentioned and drawn in question.

C. H. YOUNG,
Deputy Clerk of the Court of Appeals, S. N. Y.

U. S. Supreme Court.

THE PEOPLE, *ex rel.* THE NATIONAL BROADWAY BANK, Plaintiffs in Error,

against

JOHN T. HOFFMAN, Mayor, &c., and others, Defendants in Error.

POINTS FOR PLAINTIFFS IN ERROR.

FACTS.

On the 30th April, 1866, the Legislature of the State of New-York passed an act directing the Board of Supervisors of the County of New-York to refund to any bank, which may have paid taxes in that county for the years 1863 or 1864, such an amount of said tax as was imposed or levied upon said bank in respect to any portion of its capital stock invested in securities of the United States, *by law exempt from taxation;* and for this purpose to cause to be issued county bonds, signed, sealed and attested, as thereby required, for the amount of the claim of such bank, after it should have been audited and allowed by said Board, and approved by the Mayor and Corporation Counsel. (*Laws of New-York*, 1866, vol. 2, page 1996.)

The National Broadway Bank having paid such tax, presented its claim to the Board, and the same was audited and allowed at the sum of $53,132.31-100, as of May 1, 1866, and such auditing and allowance was ap-

proved by the Mayor and Corporation Counsel, and bonds for that amount were ordered by the Board to be issued to said bank.

Before acting upon the authority conferred, the county authorities took the opinion of the Corporation Counsel, which is set forth below. After receiving the opinion, an ordinance was passed by the Board of Supervisors, January 7, 1867, in pursuance of which, county bonds in the form prescribed by the said act of April 30th, 1866, and said ordinance, were prepared, and ready to be signed, sealed and issued to the said bank. Notwithstanding this action of the authorities, the defendants refused to execute or deliver the same.

The alleged ground of this refusal is, that a portion of the capital stock of the Broadway Bank, on which the aforesaid tax of 1863 and 1864 were levied, was invested in Certificates of Indebtedness, issued under the acts of March 1st and 17th, 1862, and the defendants claim that such certificates are not securities of the United States by law exempt from taxation, within the provisions of the act of April, 1866, and that it had been so adjudged by a branch of the Supreme Court since the decision of the Board of Supervisors.

The plaintiffs in error claim—

That such Certificates of Indebtedness are securities of the United States exempt from taxation.

On this point we refer to the opinion of the Corporation Counsel, given to the Board of Supervisors, 3d January, 1867, when the question of the exemption of such securities was by that body presented to him for his consideration :

LAW DEPARTMENT,
OFFICE OF COUNSEL TO THE CORPORATION,
January 3, 1867.

HON. JOHN T. HOFFMAN, *Mayor, &c. :*

DEAR SIR,

I have received a letter from Mr. Burrill, representing the Broadway National Bank and the Corn Exchange

Bank, and from Messrs. Miller, Stoutenburgh & Peckham, representing the Bank of New-York, requesting me to examine the question which was raised in our consideration of the bank accounts, under the act of 1866, chapter 864, section 1, *as to the claim of exemption from taxation of Certificates of Indebtedness given by the United States Government in payment of supplies, &c.*

I have been anxious to comply with their request, and although no formal inquiry has been made to me by any of the departments, it may serve to expedite the performance of our duties under the statute, if you permit me to inform you of the result of my investigation.

These Certificates of Indebtedness were issued in accordance with the Act of Congress, March 1, 1862, to creditors desirous to receive the same in satisfaction of audited and settled demands against the United States, in sums not less than one thousand dollars, ($1,000,) payable in one year from date, with six per cent. interest.

The Act of Congress of February 25, 1862, chapter 33, section 2, provides, that "all stocks, bonds and securities of the United States, held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under State authority."

Apart from the statute, and on simply constitutional grounds, the principle may be regarded as well established, that no impediment, by means of taxation, can be legally set by any State in the way of the performance by the United States Government of any of its legitimate and necessary functions.

A loan of money to the United States is protected from State taxation, as are also all the necessary elements and incidents to the loan.

I do not think that there is any sound reason why the functions of the United States in borrowing money, by loan on Government securities, should have any superior protection over its functions of obtaining directly supplies of goods necessarry for the support of the United States Government on Government securities.

The object in each case is the same, and the obstacles to the completion of the transaction desired by the Gov-

ernment would be as detrimental to the public interests in one case as in the other.

When this question was first presented to my mind, and still remained a matter of doubt, I felt bound to give the benefit of that doubt in favor of the tax-payers of this city, whose interests it is my duty, as far as possible, to protect.

I am, however, compelled to the conclusion that the claim on the part of the State to tax these Certificates of Indebtedness cannot be sustained.

They are "securities of the United States held by corporations," and are exempt under the act of February 25, 1862, above referred to.

I beg leave to submit these views for your consideration, and am,

Dear, sir,

Yours faithfully,

(Signed,) RICHARD O'GORMAN,

Counsel for the Corporation.

The attention of the court is also called to the fact, that in the cases of the Mercantile Bank, Ocean Bank, American Exchange Bank and other banks, which were taken to the United States Supreme Court, and in which it was decided that the aforesaid tax of 1863 and 1864, imposed on said bank and other banks in the City of New-York, was illegal, a part of the securities in which the capital of those banks was invested consisted of *these identical Certificates of Indebtedness*, and the necessary result of the decision in those cases was to exempt this class of certificates from taxation in the hands of these banks.

Plaintiffs in error demurred to the return to the mandamus, and judgment was rendered in favor of the defendants, which judgment was affirmed by the Court of Appeals of the State of New-York. The report of the case in that court will be found in 37 *N. Y. Reports.*

POINTS.

First.—The certificates on which exemption was claimed for the plaintiff in error were issued under and in pursuance of the acts of Congress of March 1 and March 17, 1862, (*U. S. Statutes at Large*, vol. 12, pages 352, 370.)

By the act of March 1st, 1862, p. 352, the Secretary of the Treasury was authorized "to cause to be issued to "any public creditor who may be desirous to receive the "same, upon requisition of the head of the proper de- "partment, in satisfaction of audited and settled demands "against the United States, certificates for the whole "amount due, or parts thereof, not less than one thousand "dollars; which certificate shall be payable in one year "from date, or earlier, at the option of the Government, "and shall bear interest at the rate of six per centum "per annum."

The act of March 17, 1862, p. 370, provided that "the "Secretary of the Treasury may purchase coin with any "of the bonds or notes of the United States, authorized "by law, at such rates and upon such terms as he may "deem most advantageous to the public interest; and "may issue, under such rules and regulations as he may "prescribe, certificates of indebtedness, such as are au- "thorized by an act, entitled 'An act to authorize the "Secretary of the Treasury to issue certificates of in- "debtedness to public creditors, approved March first, "eighteen hundred and sixty-two,' to such creditors as "may desire to receive the same, in discharge of checks "drawn by disbursing officers upon sums placed to their "credit on the books of the Treasurer, upon requisitions "of the proper departments, as well as in discharge of "audited and settled accounts, as provided by said "act."

All the evidences of debt or obligations for the payment of money issued by the Government since the com-

mencement of the late war, with the exception of treasury notes, (which were resorted to as a temporary expedient, and were convertible into other permanent obligations,) have been in the form of certificates of indebtedness.

When the United States assumed the debts contracted during the Revolution, and issued its obligations therefor, those obligations were in the form of certificates of indebtedness, specifying the amount and the time of payment.

1 *U. S. Stat. at Large*, 138, note.
1 *Ib.* 140, § 4.
5 *Ib.* 438, § 2.
5 *Ib.* 473, § 2.
9 *Ib.* 217, § 2.
12 *Ib.* 79, § 2.
Ib. 129, § 2.
Ib. 178, §§ 2–4.

In all the statutes relating to the finances of the Government, the words stock or stocks are used to indicate the public indebtedness, without any reference to the manner in which it was evidenced, or had originated.

Certificates of stock were always in the form of certificates of indebtedness, which imported that the United States were indebted to the persons therein named in a sum therein expressed, which was to be paid at a specified time and place, with a specified rate of interest.

The different classes of obligations have received different names, for the sake of distinction.

Some are called sixes of eighty-one, some sixes of sixty-five, some again are called five-twenties and ten-forties, and some again are called certificates of indebtedness; and they are so styled for convenience, and not because of any essential difference in the character of the obligation.

The certificates of indebtedness issued to the plaintiff in error do not differ in form or legal effect from any of the obligations issued under other statutes, except in regard to the time of payment and rate of interest.

Second.—The certificates of indebt
were exempt by the express provisions
ruary 25, 1862, which is in these wor
"bonds and other securities of the Unit
"individuals, corporations or associa
"United States, shall be exempt from
"under State authority."

12 *Statutes at Large*, p. 346,

1. We have already, under the preceding point, shown that, strictly speaking, there are no stocks or bonds of the United States, and that all the obligations of the government are in the form of certificates of indebtedness.

Such certificates must necessarily therefore come within the denomination of "securities of the United States," mentioned in the statute above cited.

2. The statute above referred to was prospective, and was not restricted to securities which had been theretofore issued, but applied equally to all securities then issued, or thereafter to be issued.

No reason can be assigned why Congress should exempt securities theretofore issued, and not exempt those thereafter to be issued; nor can any reason be assigned why Congress should declare that securities theretofore negotiated, and *then* held by individuals or corporations, should be exempt, and not make a similar declaration in favor of securities thereafter to be issued and negotiated.

On the contrary, as is well known, an opinion had been expressed by a judge of the Court of Appeals of the State of New-York, in a cause which was then pending in this court, that, even conceding that the holders of Government securities were exempt from taxation, such holders could not claim the benefit of such exemption until Congress had legislated upon it.

The Bank of Commonwealth, 23 *N. Y. R.* 199.

It was evidently the intention of Congress to place the question of exemption beyond all doubt, to relieve public

anxiety, to increase the credit of the Government and the value of its securities, and thus to encourage capitalists to invest in them, by a declaration that "all stocks, bonds and other securities of the United States in the hands of citizens, should be exempt from taxation by or under State authority."

The language of the statute is very broad, and the terms employed are very general and comprehensive, and were doubtless used for the purpose of conveying to the popular mind the idea that every one who held any Government securities of any description should be exempt.

A reference to the military and financial condition of the country at the time of the passage of the act in question, will show that the necessities of the Government were great, and that it was of the last importance that its credit should be sustained at that particular crisis; and as this could only be done by an appeal to all classes of the community to lend to the Government, it was necessary that the exemption of the securities to be issued should be placed beyond any doubt.

There was good reason, therefore, why Congress should make the exemption declared by the act of 25th February, 1862, prospective; and no reason why it should make it simply declaratory as to securities previously sold by the Government.

3. Congress having thus, in express terms, declared the exemption of all classes of Government securities, the honor and faith of the Government were pledged to strict exemption in favor of those who subsequently invested in such securities, and such exemption entered into and formed a part of the contract between the Government and the holder.

Third.—Certificates of Indebtedness issued under the acts of March 1 and 17, 1862, are exempt from taxation, aside from any action of Congress, and upon principles which have been established by this court.

I. In the various cases which have been before this court, involving the question of taxation of Government securities, obligations and operations, the decisions have been placed on the ground that the particular tax involved in those cases, and therein declared to be illegal, was either—

1. A tax upon an instrument employed by the Government to carry into execution powers vested in it by the Constitution, as in these cases below:

   4 *Wheat.* 316, McCullock *vs.* Maryland.
   9 *Ib.* 738, Osborn *vs.* Bank of U. S.

   In both of which cases the U. S. Bank was regarded as an instrument of the Government, and a tax on its operation declared to be illegal, as a tax on an instrument employed by the Government.

2. Tax on a contract made by the Government, and therefore a tax on the power of the Government to borrow money on the credit of the United States.

   2 *Peters*, 449, Weston *vs.* Charleston.
   2 *Black. U. S. R.* 620, Bank of Commerce.
   2 *Wallace U. S. R.* 206, Bank Tax Cases.

Also see—

   23 *New York Rep.* 192, 212, The Bank of the Commonwealth Case, which was reviewed in 2 *Black. U. S. R.* 620.

II. Such exemption was so declared in order to enable the Government to raise or borrow money whenever its necessities required, without danger of being interfered with by State legislation, and because the Government could not do this unless the money furnished to the

mencement of the late war, with the exception of treasury notes, (which were resorted to as a temporary expedient, and were convertible into other permanent obligations,) have been in the form of certificates of indebtedness.

When the United States assumed the debts contracted during the Revolution, and issued its obligations therefor, those obligations were in the form of certificates of indebtedness, specifying the amount and the time of payment.

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The certificates of indebtedness issued to the plaintiff in error do not differ in form or legal effect from any of the obligations issued under other statutes, except in regard to the time of payment and rate of interest.

Act June 30 '64
13 U.S. Stat 218
§ 1. 13

Second.—The certificates of indebtedness in question were exempt by the express provisions of the act of February 25, 1862, which is in these words: "All stocks, "bonds and other securities of the United States held by "individuals, corporations or associations within the "United States, shall be exempt from taxation by or "under State authority."

12 *Statutes at Large*, p. 346, § 2.

1. We have already, under the preceding point, shown that, strictly speaking, there are no stocks or bonds of the United States, and that all the obligations of the government are in the form of certificates of indebtedness.

Such certificates must necessarily therefore come within the denomination of "securities of the United States," mentioned in the statute above cited.

2. The statute above referred to was prospective, and was not restricted to securities which had been theretofore issued, but applied equally to all securities then issued, or thereafter to be issued.

No reason can be assigned why Congress should exempt securities theretofore issued, and not exempt those thereafter to be issued; nor can any reason be assigned why Congress should declare that securities theretofore negotiated, and *then* held by individuals or corporations, should be exempt, and not make a similar declaration in favor of securities thereafter to be issued and negotiated.

On the contrary, as is well known, an opinion had been expressed by a judge of the Court of Appeals of the State of New-York, in a cause which was then pending in this court, that, even conceding that the holders of Government securities were exempt from taxation, such holders could not claim the benefit of such exemption until Congress had legislated upon it.

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It was evidently the intention of Congress to place the question of exemption beyond all doubt, to relieve public

anxiety, to increase the credit of the Government and the value of its securities, and thus to encourage capitalists to invest in them, by a declaration that "all stocks, bonds and other securities of the United States in the hands of citizens, should be exempt from taxation by or under State authority."

The language of the statute is very broad, and the terms employed are very general and comprehensive, and were doubtless used for the purpose of conveying to the popular mind the idea that every one who held any Government securities of any description should be exempt.

A reference to the military and financial condition of the country at the time of the passage of the act in question, will show that the necessities of the Government were great, and that it was of the last importance that its credit should be sustained at that particular crisis; and as this could only be done by an appeal to all classes of the community to lend to the Government, it was necessary that the exemption of the securities to be issued should be placed beyond any doubt.

There was good reason, therefore, why Congress should make the exemption declared by the act of 25th February, 1862, prospective; and no reason why it should make it simply declaratory as to securities previously sold by the Government.

3. Congress having thus, in express terms, declared the exemption of all classes of Government securities, the honor and faith of the Government were pledged to strict exemption in favor of those who subsequently invested in such securities, and such exemption entered into and formed a part of the contract between the Government and the holder.

Third.—Certificates of Indebtedness issued under the acts of March 1 and 17, 1862, are exempt from taxation, aside from any action of Congress, and upon principles which have been established by this court.

I. In the various cases which have been before this court, involving the question of taxation of Government securities, obligations and operations, the decisions have been placed on the ground that the particular tax involved in those cases, and therein declared to be illegal, was either—

1. A tax upon an instrument employed by the Government to carry into execution powers vested in it by the Constitution, as in these cases below:

   4 *Wheat.* 316, McCullock *vs.* Maryland.
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   In both of which cases the U. S. Bank was regarded as an instrument of the Government, and a tax on its operation declared to be illegal, as a tax on an instrument employed by the Government.

2. Tax on a contract made by the Government, and therefore a tax on the power of the Government to borrow money on the credit of the United States.

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   2 *Wallace U. S. R.* 206, Bank Tax Cases.

Also see—

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II. Such exemption was so declared in order to enable the Government to raise or borrow money whenever its necessities required, without danger of being interfered with by State legislation, and because the Government could not do this unless the money furnished to the

Government or to the credit given to it, and the security issued by the Government, should be placed beyond the reach of State taxation.

Same Cases.

III. The State court in the present cases placed its decision on the ground that the certificates in question were "not means or instruments of the General Government "necessary to its operations." * * *

That "the money or material, or whatever may have "been the original consideration of the indebtedness in "question, had been previously received by the Govern-"ment."

And, again: "That the certificates were not issued to "obtain money or materials, but were to be issued as a "payment, *at a subsequent day*, for what had been re-"ceived and spent by the Government."

We submit that the grounds on which this decision rests, and the reasons assigned for it, are too narrow and contracted; that in disposing of the question involved, the court should act and stand upon broader and more liberal principles.

It should look at the object and purposes of the act, the condition of the Government at the time, its wants and necessities; should consider what the generally received interpretation of the act throughout the country was at the time, and the extent to which the people acted on the faith of that interpretation, and also what use was made by the Government of the securities authorized by this act.

13 Wall Stat 469 ≥ 2

1. The act was not intended as a mere means of providing payment for a precedent debt incurred by the Government.

Its object was to enable the Government in the future to procure, on the credit of the United States, the necessary supplies to enable it to carry on its military and naval operations.

The act did not limit or restrict the issue of certificates to creditors who had theretofore furnished supplies and

materials, but applied to those who might thereafter become creditors of the Government on that account.

2. The court below have overlooked the fact that these certificates, no matter for what purpose issued, were payable at a future day and with interest.

The credit of the Government was, therefore, furnished to the parties to whom these certificates were issued.

3. The individual who furnished military stores and equipments, and received these Certificates of Indebtedness, payable at the expiration of twelve months, furnished the same on the credit of the Government, and was as truly a lender to the Government as he who loaned money.

4. It is not correct, as the court below held, that these certificates were not issued to obtain money or materials. On the contrary, these certificates were intended to be used, and were, in fact, used, as instruments of loan.

It was the fact that capitalists were willing to and did invest their money in these securities, which enabled the contractor to furnish his supplies to the Government on credit, and thus enable the Government to procure the necessaries of war. The contractor furnished the supplies on credit, and took these time obligations in payment, because he knew that he could realize on them; and the capitalist who invested his means in such certificates, virtually loaned his money to the United States to enable them to purchase such supplies.

5. Nor is it correct, as the court below held, that "these certificates were not the means or instruments of "the general Government necessary to its operations."

The court showed the error of its own opinion when it said: "Congress may determine what are the suitable "means to carry on the Government, and when so de- "clared, * * * such means are exempt."

Congress did determine that these certificates were

suitable and necessary means to carry on the Government, and further determined their exemption.

6. Again, any person who received Government obligations payable at a future time, no matter in what form, whether in that of certificates or otherwise, gave credit to the Government, and was a lender of whatever the Government had received in exchange for such certificates, whether it was money or military supplies.

7. The Government issued these certificates of indebtedness in exercise of the constitutional power to borrow money, and it had no other right to issue them.

It cannot be that an instrument which was executed solely by virtue of the power to borrow money, is not a means of borrowing.

If the issue of these certificates was rightful only as an exercise of the power to borrow money, it follows necessarily that such certificates are a means employed by the Government to carry into execution such powers.

This being so, these certificates are necessarily exempt.

Justice Nelson, in 2 *Black. U. S. R.*, 632–3–4, says: "The doctrine maintained in those cases is that the "powers granted by the people of the States to the General Government, and embodied in the Constitution, "are supreme within their scope and operation, and that "this Government may exercise these powers in its appropriate departments, free and unobstructed by any "State legislation or authority. That within this limit "this Government is sovereign and independent, and "any interference by the State Governments tending to "the interruption of the full legitimate exercise of the "powers thus granted, is in conflict with that clause of "the Constitution which makes the Constitution and the "laws of the United States passed in pursuance thereof, "'the supreme law of the land.' * * * The "conclusive answer to the attempted exercise of State "authority in all these cases is, that the exercise is in "derogation of the powers granted to the General Government, within which, it is admitted, it is supreme.

"* * * The power to borrow money on the "credit of the United States is admitted. It is one of "the most important and even vital functions of the Gen- "eral Government, and its exercise a means of supply- "ing the necessary resources to meet exigencies in times "of peace or war. But of what avail is the function or "the means, if another Government may tax it at its "discretion. It is apparent that the power, function, or "means, however important and vital, are at the mercy "of that Government."

Fourth.—These certificates are contracts between the Government and the holders, by which the Government agrees to pay the holder the money therein mentioned at a future day, with interest.

They are negotiable instruments, payable to the bearer thereof, and transferable by mere delivery.

After they have passed from the hands of the party to whom they were originally delivered, the question of the original consideration is immaterial.

They become contracts between the holder and the Government, and by such contracts the credit of the Government is pledged to the holder for the payment of the money.

Congress has determined that such contracts are a necessary and essential means of exercise of the powers conferred on it by the Constitution.

See Argument of Mr. Lord, in 2 *Black. U. S. R.* 623.

Justice Nelson, in the same case, adopts the language of the court in Weston *vs.* City of Charleston. "A "contract made by the Government in the exercise of its "powers to borrow money on the credit of the United "States, is, undoubtedly, independent of the will of any "State in which the individual who lends may reside, "and is undoubtedly an operation essential to the im- "portant objects for which the government was created." (P. 632.)

It matters not whether the contract in question be one entered into in the exercise of the power to borrow money, or in the exercise of any other power.

The exemption is not limited to contracts made in execution of that particular power, but it applies equally to all contracts entered into by the Government in the execution of powers constitutionally conferred.

It is not for us to seek out any other power to the exercise of which this class of contracts can be applied.

The right of Congress to authorize the issue of these certificates is not questioned, and their legality and validity is not denied.

We say that they were issued in the exercise of the power to borrow money; but if they were not so issued, and were issued in the exercise of any other power, it matters not.

In any event, they are *contracts* made by the Government, whereby its credit is pledged; and the contract is exempt, on the principle that a State has no right to tax any contract entered into by the Government as a means of executing the powers conferred by the Constitution.

All the cases hold this.

The court, in 3 *Wallace*, 593–4, says: "Taxation of "national securities is taxation upon the contracts of the "United States, and may be regarded, not unreasonably, "as impairing their obligation, unless provision is made "for such taxation in the laws authorizing the loans for "which they are issued. It is not alleged that any "such provision is contained in the acts under which the "Government issued the bonds held by the National "Banking Associations. On the contrary, these acts con- "tain express stipulations with the national creditors that "the bonds issued under them shall be exempt from "taxation by or under State or municipal authority. "This is, in effect, a stipulation on the part of Congress "that the takers of the Government loan shall have the "right to use the bonds issued to them for any lawful "purpose, free from State or municipal taxation."

In the court below, Chief Justice Hunt says, Congress may determine what are the suitable means to carry on

the Government, and when so declared, whether in form of bank, mail, or loans, such means are *ipso facto* exempt.

Although it so happened, in most of the cases in this court, the instruments in question were contracts of the Government entered into in execution of the power to borrow money, it cannot be inferred that the exemption was limited to that particular class of contracts.

The reasoning adopted by the court, and the principle established by the decisions, is equally applicable to all contracts.

This will appear from a reference to the opinion of the court in 4 *Wheat.* 316, McCulloch *vs.* State of Maryland, and to two other kindred cases.

9 *Wheat.* 738, Osborn *vs.* Bank of U. S.
16 *Peters*, 435, Dobbins *vs.* Comm'r of Erie Co.

In the cases in 4 *Wheat.* 316, and 9 *Wheat.* 738, the court declared the tax illegal, because "it was a tax on the "operations of the United States Bank, and consequently "a tax on an instrument employed by the Government "to carry its powers into execution."

We submit, that the certificates in question were exempt, and that the judgment should be reversed.

JOHN E. BURRILL,
Of Counsel for the National Broadway Bank, Plaintiff in Error.

Supreme Court

OF THE UNITED STATES.

DECEMBER TERM, 1868.

No. 248.

THE PEOPLE OF THE STATE OF NEW YORK,

EX. REL.

THE NATIONAL BROADWAY BANK,

Plaintiffs in Error,

agst.

JOHN T. HOFFMAN, MAYOR OF THE CITY OF NEW YORK, AND OTHERS.

Defendants in Error

BRIEF AND POINTS FOR THE DEFENDANTS IN ERROR.

CH. O'CONOR,

RICHARD O'GORMAN,

Of Counsel for Defendants in Error.

NEW-YORK:
W. C. ROGERS & CO., PRINTERS AND STATIONERS,
No. 37 JOHN STREET.
1868.

U. S. Supreme Court.

SUPREME COURT OF THE UNITED STATES—
DECEMBER TERM, 1868.

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THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* THE BROADWAY NATIONAL BANK,
Plaintiffs in Error,

agst.

JOHN T. HOFFMAN, Mayor of the City of New York, RICHARD B. CONNOLLY, Comptroller of the City of New York, and JOSEPH B. YOUNG, Clerk of the Board of Supervisors of the County of New York,
Defendants in Error.

Brief for Defendants in Error.

STATEMENT OF FACTS.

In the years 1863 and 1864, whilst it was a State bank, the relator below, now plaintiff in error in this Court, paid taxes levied upon its capital by the State tax laws. A portion of its capital which was thus taxed was invested in the certificates commonly called certificates of indebtedness, issued under and in pursuance of

the provisions of the act of Congress passed March 1, 1862, entitled "an act to authorize the Secretary of the Treasury to issue certificates of indebtedness to public creditors."

12 Statutes at large, p. 352. See extension of this act, same volume, p. 370, § 1.

On April 3, 1866, the Legislature of New York passed an act to provide for refunding to various banks and insurance companies in the city of New York the taxes of the said years 1863 and 1864, "imposed and paid or collected upon that portion of their capital invested in securities of the United States, by law exempt from taxation."

Laws of N. Y., 1866, vol. 2, p. 1996, § 1.

This State act directs county bonds "to be issued to any bank, &c., which may have paid taxes in said county [of New York] for the years 1863 or 1864, or which may hereafter pay taxes levied in said years upon any portion of their capital stock invested in certain securities of the United States, by law exempt from taxation." The usual directions are given for ascertaining and auditing the amount so paid by the Banks, and the refunding bonds are ordered to be issued for the amount so paid, "together with the amount claimed for costs, charges, and interest." The claim of the relators was audited accordingly on May 1, 1866, at fifty-three thousand one hundred and thirty-two dollars and thirty-one cents.

The defendants in error were the officers charged by

the State laws, with the duty of signing, countersigning, attesting, and delivering all bonds required to be issued by this act. The defendants in error having refused to issue bonds to the relator below, now the plaintiff in error, an *alternative mandamus* was issued out of the State Supreme Court against the defendants on February 19, 1867. The defendants in error by their return, set up, as a justification of their refusal, that said audit and allowance was unauthorized by said State act of 1866.

The plaintiffs in error demurred to the return. The defendants joined in demurrer. Judgment was given in favor of the defendants; and, on successive appeals that judgment was affirmed by the State Supreme Court, at General Term, and by the Court of Appeals, which is the highest court of law of the State of New York.

On the latter judgment the relators below sued out of this court a writ of error.

The question discussed in the opinions delivered in the courts below, was whether by the Constitution or laws of the United States, or both, the said certificates of indebtedness were exempt from taxation by State authority.

It does not appear by the record that any compulsory means were employed to collect the taxes in question, or that they were paid otherwise than voluntarily. And it is supposed that they were voluntarily paid.

POINTS.

FIRST POINT.—The judgment of the State Court is not subject to review in this Court.

I.—The plaintiff in error, having voluntarily paid the tax, had no right to recover it back, even in a regular action at law, or suit in equity. There was no color of a claim enforceable by *mandamus*, except such as might have arisen under the State Act of April 3, 1866.

II.—The reimbursement contemplated by the State in its legislative Act of April 3, 1866, was a voluntary grace and favor to a certain class of claimants upon its liberality.

III.—Neither when applying to the Legislature for this special act, nor when endeavoring by argumedt before the State Court, to obtain a construction thereof, which would bring the claim within its terms or intent, could the plaintiff in error be considered as setting up or claiming any title, right, privilege or exemption, under any clause of the Constitution or any statute of the United States. Consequently, the case is not within the twenty-fifth section of the judiciary act.

1 Statutes at large, p. 85.

IV.—When the plaintiff in error voluntarily paid the tax in question, it waived any *exemption* that may have existed. When it appeared as a suitor or party in the state court it had no *title*, *right* or *privilege* save such as may have been conferred by the state act. The construction import and effect of the constitution and laws of the United States in

respect to state powers of taxation were only incidentally brought under consideration in the state court; they were not "immediately drawn in question," within the true intent and meaning of the judiciary act.

V.—An agreement to pay a sum of money provided an act of Congress had a particular effect would not confer jurisdiction on this court to review the judgment of a State Court in the negative; yet, in principle, such a case would not differ from the present.

SECOND POINT.—The exemption of the public debt of the United States from taxation by State authority rests upon that clause of the Constitution which authorizes Congress "to borrow money on the credit of the United States" (*Art.* I, § 8, *subd.* 2, *Weston vs. Charleston*, 2 *Peters*, 449.) The exemption has no other basis. The instruments and organs whereby the Federal Government carries on its operations, as, for instance, its real and personal property, its corporate agencies, &c., are exempt. But it cannot be maintained that the claim of a person upon the Government is an instrument or agency, or that it is property of the Government. It is simply a property or "*chose*" belonging to the creditor.

I.—The power to provide and maintain a navy cannot be a basis of exemption; for *non constat* that these certificates were issued for supplies to the navy.

II.—The power to raise and support armies is, for a like reason, incapable of furnishing any support to the exemption.

III.—The other specific powers afford still less color for it.

IV.—If the power of paying the debts of the Government, as specified in the first subdivision, should be resorted to, the subdivision itself will furnish the answer. It is by levying and collecting taxes, duties, imposts, and excises, that the public debts are to be paid and not by granting exemptions.

THIRD POINT.—Congress has no express authority to *grant* an exemption from the taxing power of the States; nor in strictness has that body any implied authority in that behalf. It is only where an exemption arises from the nature of the subject, and might be implied from the Constitution itself, that Congress may *declare* it. None of the cases allowing exemptions which have been decided by this Court depended, in any degree, upon the legislation of Congress. They all went upon the reason and nature of the thing. The exemption was necessarily implied therefrom.

FOURTH POINT.—It only remains, then, to inquire whether issuing a certificate acknowledging a pre-existing indebtedness, arising from the purchase of supplies or procurement of services is "borrowing money."

I.—According to the ordinary and familiar understanding of the words, it certainly is not.

II.—The term in use at the time which would have come nearest to a description of these certificates is "bills of credit." With that term the Convention was very familiar. It prohibited their issue by the States. *Art.* 1, § 10, *subd.* 1. It did not confer upon Congress any power to issue them.

III.—The modes of raising means to conduct the operations of government are distinctly pointed out by the constitution. First, taxes, &c. Secondly, borrowing money. Neither borrowing goods, &c., nor buying on credit is sanctioned; neither was necessary. The other means were adequate so long as there was money at home or credit abroad. If both these resources should fail, public affairs must have fallen into a very sad condition, indeed. There could hardly be any thing worth saving, or any adequate advantage in resorting to that most desperate of all desperate expedients—buying goods, &c., upon credit by a government that had no *pecuniary* credit.

IV.—The English statutes regulating interest on loans, commonly called the Usury Laws, in all their revisions and re enactments from 3 Henry VII., chapter 5, (A D., 1486), to the present time, and their imitations in this country, distinguished between a loan of money and mere forbearance of a pre-existing debt or of the payment for merchandise purchased or the like.

The Convention of 1787 was familiar with this distinction; yet the power to borrow is confined to borrowing *money*.

This was very wise. He who has no credit to borrow money wherewith to pay his butcher and his baker, and is constrained to take his bread and meat upon credit, will always be obliged to pay a most unconscionable price.

FIFTH POINT.—If the relators cannot stand upon an implication from the principles of the Constitution and are compelled to resort to the acts of Congress, they must fail.

I.—Congress, as before stated, cannot create an exemption from State taxes. Its only power, in this respect, is to declare an exemption arising from the nature of the subject, which the Courts would have enforced on constitutional principles without such declaration.

II.—Upon a fair construction of their terms, it is plain that none of the acts of Congress exempting Federal securities from State taxation apply to certificates of indebtedness.

1.—The act of February 25, 1862, enacts that "all stocks, bonds, and other securities of the United States, shall be exempt from taxation, by or under State authority" (12 *Statutes at Large*, *p.* 346, *sec.* 2); and the act of June

30, 1864, enacts that all bonds, treasury notes, and other obligations of the United States, shall be exempt from taxation, by or under State or Municipal authority." (13 *Statutes at Large*, *p.* 218, *sec.* 1.)

But it is manifest that the phrases "other securities" and "other obligations" are not to be taken so largely as to include every indebtedness of the United States. Securities and obligations issued to secure the repayment of moneys borrowed were alone understood at these times to be exempt from State taxation by the constitution, and nothing more was intended by these Statutes than to declare and promulgate that exemption.

2.—The first act on the subject authorized the issue of the certificates in question, "in satisfaction of audited demands." The second authorized such issues "in discharge of checks drawn by disbursing officers" on the treasury. This was not borrowing money. It was a new device for the greater accommodation of public creditors, who might otherwise be obliged to wait for a considerable time at the doors of the Treasury. Neither act contained any exemption from State taxes, nor should it have contained any, for it did not contemplate obtaining any accommodation to the Government. The sole object was to facilitate the public creditor; no longer term of payment could be in-

serted than a single year, though it might be as much shorter as the Government should desire.

12*th Statutes at Large, p.* 352.

3. The second section of the act passed March 3, 1865, in one place speaks of "bonds or other obligations," and in another speaks of "certificates of indebtedness, or certificates of deposit or other representatives of value, which may have been, or may be, issued under any act of Congress." And it closes by declaring that "all bonds or other obligations *issued under this act* shall be exempt from taxation by or under State authority."

13*th Statutes at Large, p.* 469, § 2.

It will be seen that in this act, th word "bonds" is used in connection with the formula or "other obligations; whilst "certificates of indebtedness,', &c., is used not in connection with the phrase "other obligations," but with a different formula, *i. e.*, "other representatives of value." And in making the declaration of immunity from State taxes, the act employs the first, and not the latter formula. This use of the

word "other" in a statute, after specifying one subject or more, is always construed as indicating an intent to include only other things of the same nature as the thing or things specified, such an act is to be construed as if "like" were interposed after "other."

The employment of a different formula distinguishing bonds from certificates of indebtedness, is strong evidenec of the sense of Congress that the latter should not be incluled in the exemption.

Dwarris on Statutes, pp. 666, 777.

SIXTH POINT.—Unless the writ of error shall be dismissed, the judgment given in the Court of Appeals should be affirmed with costs.

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